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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of	)	MM Docket No. 92-50
GOLDEN CORNERS BROADCASTING, INC.	)	File No. BPH-901218MH
(hereafter "GCBI"))	
FISHER COMMUNICATIONS OF	)	File No. BPH-901219MB
CLEMSON, INC.)	
(hereafter "Fisher"))	
CLEMSON BROADCASTING, INC.	)	File No. BPH-901219MD
(hereafter "CBI"))	
For Construction Permit)	
for a New FM Station)	
on Channel 285A (104.9 MHz))	
in Clemson, South Carolina)	

TO: The Honorable Walter C. Miller
Administrative Law Judge

MOTION TO DELETE ISSUE UPON IMPOSITION OF CONDITION

Golden Corners Broadcasting, Inc. and Clemson Broadcasting, Inc., by counsel, pursuant to that certain Settlement Agreement and Joint Petition for approval thereof which is pending before the Presiding Officer, hereby move that the air hazard issue designated against GCBI be deleted. In support whereof, GCBI and CBI respectfully state as follows.

As noted in the Hearing Designation Order, DA 92-263 (rel. Apr. 13, 1992), the Federal Aviation Administration ("FAA") determined that all of the proposals of the remaining applicants would constitute a hazard to air

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navigation due to FAA predictions of electromagnetic interference.^{*/} Both GCBI and CBI consulted independently with airspace specialists and their consulting engineers to determine if there was an alternative location within the site restrictions designated by the Commission for this allotment, or any other alternatives to their proposals, which would eliminate or resolve the FAA's EMI concerns. Both applicants were advised that, under the FAA's existing model for predicting the likelihood of EMI occurrence, there were no means by which this issue could be resolved.^{**/}

Under these circumstances, the Commission has addressed this problem through an interim solution. In Texas Communications Limited Partnership, 5 F.C.C. Rcd. 5876, 5879 (Rev. Bd. 1990), a condition was placed upon the construction permit as follows:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

^{*/} Although the FAA also initially determined that the tower height proposed by GCBI would be a hazard, GCBI amended its application to reduce the height and eliminate this problem, as noted in the Hearing Designation Order, thus leaving only the prediction of EMI as a hazard to air navigation.

^{**/} GCBI was advised that it would have to move its proposed site some 40 miles southwest of its current site to eliminate the EMI prediction.

This interim solution of a conditional grant has been supported by the Mass Media Bureau in the past, and counsel is advised that the Bureau would support imposition of such a condition and deletion of the issue in this proceeding.

The efforts of these two agencies to find a permanent resolution of problems created to FCC allotment and construction processes by the FAA's predictions of EMI have been ongoing and well-documented but, so far, unsuccessful. As CBI pointed out in its Petition to the Bureau on this issue (a copy of which is attached hereto for convenience of reference), imposition of such a condition is consistent with the interim procedures agreed to between the FCC and FAA in 1985 on siting of broadcast facilities. In accordance with those procedures, the FAA has been made a party to this proceeding and, notwithstanding its failure to enter a Notice of Appearance, it is being served with a copy of this pleading.^{***}/ Unless the FAA therefore objects, GCBI and CBI submit that it would be in the public interest to impose such a conditional grant as the only means by which a full-time broadcast facility can be constructed to serve Clemson, South Carolina.

With such a conditional grant, the permittee (or licensee) seeks to take the risk that it will be able,

^{***}/ It is this aspect which distinguishes the present motion from the petition filed by CBI before the Bureau, requesting that such a condition be imposed rather than an issue being designated. When an issue is designated, and the FAA made a party, the FAA receives a formal opportunity to object, in accordance with Commission policy and the above-referenced procedures.

notwithstanding theoretical computer model predictions, to ensure that it operates without creating an actual hazard to air navigation. It is the only means by which the community of Clemson, which is currently served only by a single AM, daytimer, broadcast station, can receive full-time broadcast service devoted to its needs. Therefore, GCBI and CBI respectfully submit that deletion of the issue and imposition of this interim condition upon the permittee is appropriate.

Respectfully submitted,

CLEMSON BROADCASTING, INC.

GOLDEN CORNERS BROADCASTING,
INC.

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Its Counsel

Its Counsel

May 8, 1992

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

JUN 4 - 1991

In re Application of)
CLEMSON BROADCASTING, INC.)
For Construction Permit for)
a New FM Station,)
Channel 285A, Clemson, SC)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FCC FILE NO. BPH-901219MD

To: The Commission

**PETITION FOR LEAVE TO AMEND AND AMENDMENT AND
REQUEST FOR IMPOSITION OF CONDITION**

Clemson Broadcasting, Inc. ("CBI") by Counsel, and pursuant to §73.3522(a) of the Commission's Rules, hereby submits the instant Petition for Leave to Amend and requests that the Commission accept the Amendment attached hereto. Additionally, CBI requests that the Commission impose the following condition on any construction permit that may be issued to CBI, in the event its application for a new FM Station at Clemson, South Carolina is granted:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

Good Cause for Acceptance of the Amendment

1. The attached amendment provides a copy of a notification from the Federal Aviation Administration that CBI's proposal would cause a hazard to air navigation from the

Clemson-Oconee County Airport. The instant information is submitted pursuant to 1.65 of the Commission's Rules. No party will be prejudiced thereby, and no comparative advantage will be gained thereby. Good cause for acceptance of this amendment is thus demonstrated.

Request for Imposition of Condition

2. The attached FAA Notification provides that CBI is not expected to pose a physical obstruction hazard to air navigation, provided the licensee provides a certified survey of at least a 2C accuracy (+/- 50 ft. Horz. and +/- 20 ft. Vert.). In that case, the proposal would not necessitate raising the Minimum Descent Altitude for the Clemson-Oconee County Airport. CBI has agreed to supply a certified site survey to at least a 2C accuracy. Therefore, the FAA does not consider that CBI will cause any physical obstruction to air navigation.

3. However, the FAA is of the opinion that the proposal would cause EMI interference, and that, for that reason, the proposal would constitute a hazard to air navigation. Pursuant to the opinion of CBI's engineering and airspace consultants, there are no other sites available which would avoid such EMI interference. Accordingly, in order to avoid the necessity for designation of an air hazard issue against CBI for hearing, CBI hereby requests imposition of the following condition, in the event CBI's application for Clemson is granted:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

4. EMI problems in general have been the subject of controversy between the Commission and the FAA. However, in cases where EMI is the sole navigational problem, the FCC has permitted applications to be granted with a condition that any harmful interference be eliminated by the licensee. Indeed, imposition of such a condition is consistent with the interim procedures agreed to between the FCC and the FAA in 1985, relating to the establishment of technical criteria for siting of Broadcast facilities with respect to aeronautical navigation and communication facilities. As set forth in a July 12, 1985 letter from then-FCC Chairman Mark Fowler to then-FAA Administrator Donald Engen, the FCC and FAA would, as an interim matter, not preclude the grant of broadcast authorizations as to which the FAA believed there to be some electromagnetic interference question. Instead, the interim policy called for the FAA to advise the FCC of those applications which the FAA identified as raising potential EMI questions, and the FCC would add appropriate limited conditions on any such authorizations. Those conditions were fully acceptable to the FAA.

5. Moreover, the Communications Act grants the FCC sole

jurisdiction over communications frequencies and communications towers. See 47 U.S.C. §303(c), (f), (q). The FCC is empowered to assign bands of frequencies to the various classes of stations, and to assign frequencies for each individual station and determine the power which each station shall use, and is empowered to make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations. The FAA on the other hand, is authorized to make recommendations regarding tower structures when such pose possible physical hazards to air navigation, and to require the painting and or illumination of radio towers if and when in its judgment such towers constitute, or there is reasonable possibility that they may constitute, a menace to air navigation. There is no such danger here, with respect to CBI's proposed facility.

6. The imposition of the condition set forth above in ¶ 1 previously has been used to resolve similar EMI issues. See, Texas Communications Limited Partnership, 5 FCC Rcd 1592 (ALJ, 1990), aff'd, 5 FCC Rcd 5876 (Rev. Bd. 1990); Q Prime, Inc., Memorandum Opinion and Order, FCC 91M-817 (Released March 4, 1991) (copy attached, Attachment 1); Roxanne Givens, FCC 89M-2754 (Released December 7, 1989) (copy attached, Attachment 1); Charley Cecil & Dianna Mae White d/b/a White Broadcasting Partnership, FCC 91M-1317 (Released April 16, 1991) (copy attached, Attachment 1); Topp Broadcasting Limited Partnership, FCC 91M-1255 (Released April 11, 1991) (copy

attached, Attachment 1). Where the FAA did not oppose the use of the conditional grant clause, the Commission and the Presiding Judges in those cases granted the construction permit subject to the conditional clause set forth above.

7. The Bureau itself has supported summary decision through the use of the conditional clause. As recently as April 4, 1991, the Bureau has stated its willingness to accept such a clause as a condition to a construction permit where the EMI issue had been raised. (See, Mass Media Bureau Comments on Motion for Summary Judgment, attached hereto as Attachment 3.)

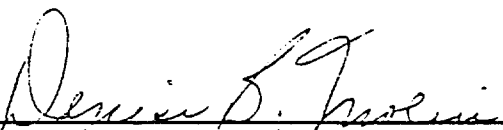
8. Imposition of a condition in the Hearing Designation Order, should CBI's application be designated for Hearing with the other competing applicants for Clemson, would avoid the necessity of designation of an air hazard issue against Clemson, would reduce the number of issues for Hearing, and would thus promote administrative convenience, conserve agency and applicant resources, and would be in the public interest.

9. CBI recognizes that it may be obliged to resolve the EMI problem with the FAA at a later date, and intends to do so, if possible, prior to the construction of its proposed facility. However, imposition of the above condition will permit construction and new service, while allowing the FAA the opportunity to object to the Commission, in the event of any actual, perceived interference to local air navigational systems.

WHEREFORE, the foregoing considered, CBI respectfully requests that the Commission ACCEPT the instant amendment, and IMPOSE the Condition set forth above on the proposed operation of CBI's FM Station at Clemson, South Carolina, in the event CBI's application is eventually granted.

Respectfully submitted,

CLEMSON BROADCASTING, INC.

By: 
Denise B. Moline
Its Attorney

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Manassas Park, VA 22111

(703) 361-2278

June 4, 1991

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

RECEIVED

JUN 4 - 1991

In re Application of)
CLEMSON BROADCASTING, INC.)
For Construction Permit for)
a New FM Station,)
Channel 285A, Clemson, SC)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
FCC FILE NO. BPH-901219MD

To: The Commission

MINOR AMENDMENT

Clemson Broadcasting, Inc. by its President, hereby amends its above-referenced Application to include the attached notification from the Federal Aviation Administration. The instant information is submitted pursuant to 1.65 of the Commission's Rules. No party will be prejudiced thereby, and no comparative advantage will be gained thereby. Good cause for acceptance of this amendment is thus demonstrated.

5-29-91
Date

Cheryl M. Lee
Cheryl M. Lee, President
Clemson Broadcasting, Inc.



US Department
of Transportation

Federal Aviation
Administration

SOUTHERN REGION
ATTN: ASD-532
P.O. BOX 20636
ATLANTA, GEORGIA 30320
(404) 763-7646

IN REPLY REFER TO
AERONAUTICAL STUDY
NO. 90-ASO-2489-OE

DETERMINATION OF HAZARD TO AIR NAVIGATION

SPONSOR	Ms. Cheryl Lee Clemson Broadcasting, Inc. 510 Bentbrook Lane Clemson, South Carolina 29631	CONSTRUCTION LOCATION	
		PLACE NAME	
		LaFrance, SC	
CONSTRUCTION PROPOSED	DESCRIPTION Antenna Tower (104.9 MHz, 3 kw ERP)	LATITUDE	LONGITUDE
		34°36'55"	82°44'43"
		HEIGHT (IN FEET)	
		ABOVE GROUND	ABOVE MSL
		273	1093

An aeronautical study of the proposed construction described above has been completed under the provisions of the Federal Aviation Act of 1958, as amended. Based on the study, it is found that the construction would have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigational facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the construction would be a hazard to air navigation.

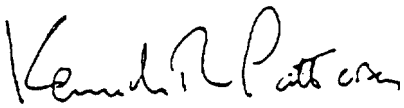
This determination is subject to review if a petition is filed by an interested party on or before June 12, 1991. In the event a petition for review is filed it should be submitted in triplicate to the Manager, Flight Information and Obstructions Branch, AAT-210, Federal Aviation Administration, Washington, D.C., 20591, and contain a full statement of the basis upon which it is made.

This determination becomes final on June 22, 1991, unless a petition for review is timely filed, in which case the determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review.

If the structure is subject to the licensing authority of the FCC, a copy of this determination will be sent to that Agency.

The determination, issued in accordance with Sections 307(a) and 313(a) of the Federal Aviation Act of 1958 as amended, concerns the effect of this proposal on the safe and efficient use of the navigable airspace by aircraft and does not relieve the sponsor of any compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Distribution: ZAT-03


SIGNED Kenneth R. Patterson TITLE Airspace Specialist
East Point, GA System Management Branch
ISSUED IN East Point, GA ON May 13, 1991

The proposed antenna tower would be located approximately 7.42 nautical miles north of the Anderson County Airport Reference Point. It would exceed obstruction standards contained in Part 77, Subpart C, of the Federal Aviation Regulations as follows:

77.23(a)(3) by 36 feet, a height that increases a minimum instrument flight altitude within a terminal area (TERPS criteria).

The proposal would necessitate raising the Minimum Descent Altitude (MDA) for the Clemson-Oconee County Airport NDB-A approach from 1500 ft. to 1540 ft. Study revealed that with a certified survey of at least a 2C accuracy (+/- 50 ft. Horz. and +/- 20 ft. Vert.), the proposal would not effect the MDA. The proponent has agreed to supply a certified site survey to at least a 2C accuracy.

Study for Electro Magnetic Interference (EMI) effect revealed intermodulation interference with the Greenville, SC, GYH/GMU (108.3 MHz/109.7 MHz) localizer facilities. Our analysis indicates that aircraft operating in the frequency protected service volume (FPSV) making an instrument landing system (ILS) approach to Runway 4 at the Donaldson Center Airport, and Runway 36 at the Greenville Downtown Airport will be subject to hazardous two signal/third order intermodulation interference of the type (A) $2f_1 - f_2$ and three signal/third order intermodulation interference of the type (B) $f_1 + f_2 - f_3$ type resulting in navigation receiver overload. This interference would be caused by the proposed frequency in combination with existing stations as follows:

Type (A): [WANS(107.3 MHz) - PROP(104.9 MHz) = GMU(109.7 MHz)]

Type (B): [WANS(107.3 MHz) + PROP(104.9 MHz) - WLWZ(103.9 MHz) = GYH(108.3 MHz)]

Intermodulation interference occurs whenever two or more signals or their integer multiples combine in such a manner that the product is the frequency to which the receiver is tuned. These signals combine in the nonlinear external devices to produce sum and difference frequencies through heterodyne action.

Therefore, it is determined that the proposal would have a substantial adverse effect upon the safe and efficient utilization of the navigable airspace by aircraft and on the operation of air navigation facilities and would be a hazard to air navigation.

The proposal was found to have substantial adverse effects as a result of the internal study and, therefore, public circularization was not deemed necessary.

CLEMSON BROADCASTING, INC.
BPH-901219MD

AMENDMENT TO APPLICATION
CLEMSON, SC

ATTACHMENT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-817
2941

In re Applications of	)	MM DOCKET NO. 90-418
Q PRIME INC.	)	File No. BPH-890411MA
SMITH BROADCASTING, INC.	)	File No. BPH-890412MC
ATWATER KENT COMMUNICATIONS INC.	)	File No. BPH-890412MD2
COLUMBIA RIVER WIRELESS, INC.	)	File No. BPH-890412MF
FLORINDA J. WEAGANT	)	File No. BPH-890412MI
McCOY COMMUNICATIONS LIMITED PARTNERSHIP	)	File No. BPH-890413MA
KLRK, INC.	)	File No. BPH-890413MC
THOMAS M. EELLS	)	File No. BPH-890413MH
CLARK BROADCASTING LIMITED PARTNERSHIP	)	File No. BPH-890413MJ
BERNARD V. FOSTER	)	File No. BPH-890413MK
VANCOUVER FM BROADCASTERS LIMITED PARTNERSHIP	)	File No. BPH-890413ML
COLUMBIA-WILLAMETTE LIMITED PARTNERSHIP	)	File No. BPH-890413MW
COLUMBIA FM LIMITED PARTNERSHIP	)	File No. BPH-890413NH
ANDREW L. BROWN & LESTER M. FRIEDMAN d/b/a TRANS-COLUMBIA COMMUNICATIONS	)	File No. BPH-890413NL
For Construction Permit for a New FM Station on Channel 290C2 in Vancouver, Washington)	

MEMORANDUM OPINION AND ORDER

Issued: February 28, 1991

Released: March 4, 1991

1. Under consideration are a Motion for Summary Decision filed on February 6, 1991, by Columbia River Wireless ("Wireless"); an opposition filed on February 19, 1991, by KLRK, Inc. ("KLRK"); an opposition filed on February 20, 1991, by Florinda J. Weagant ("Weagant"); and comments in support of the motion filed on February 20, 1991, by the Mass Media Bureau.

2. Wireless seeks summary decision of the air hazard issue specified against it in the Hearing Designation Order in this proceeding, 5 FCC Rcd 7160

(1990) ("HDO"). The issue was predicated upon a determination by the Federal Aviation Administration ("FAA") that the facilities proposed by Wireless may have an adverse effect on the FAA's navigational aid facilities and cause electromagnetic interference ("EMI") with aircraft navigational receivers during final approach and landing at Portland, Oregon. HDO at para. 11. In support of its motion, Wireless states that it is willing to accept a specified condition on its construction permit which would require it, inter alia, to take corrective action should its proposal cause EMI. Wireless contends that this approach has been taken in other Commission proceedings, and that it is appropriate here.

3. KLRK and Weagant oppose summary decision of the air hazard issue arguing that it is procedurally defective, that conditioning a grant to Wireless would be unfair to other applicants whose proposals do not present EMI problems, and that material and substantial questions of fact exist. The Mass Media Bureau supports summary decision, stating that the specified condition will moot the air hazard issue.

4. Wireless's motion will be granted. Given the imposition of the condition, it is clear that the air hazard issue will become moot. KLRK's and Weagant's arguments to the contrary are unpersuasive and are rejected. Cf. Texas Communications Limited Partnership, 5 FCC Rcd 5876, 5879 (Rev. Bd. 1990). Consequently, it is concluded that no genuine issue of material fact remains for determination at the hearing, and that Wireless is otherwise entitled to summary decision. See Section 1.251(d) of the Commission's Rules.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Wireless on February 6, 1991, IS GRANTED, and Issue 3 IS RESOLVED in its favor.

IT IS FURTHER ORDERED that, in the event Wireless's captioned application for a construction permit is granted, such grant will be subject to the following condition:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg

Arthur I. Steinberg
Administrative Law Judge

FCC MAIL ROOM

DUPLICATE

DEC 7 12 00 PM '89 Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 89M-2754

789

In re Applications of	)	MM DOCKET NO. 89-387
ROXANNE GIVENS	)	File No. BPH-871202MC
MINNESOTA PUBLIC RADIO	)	File No. BPH-871203MC
NANCY JEAN PETERSON	)	File No. BPH-871203MF
SOUTHWEST SUBURBAN BROADCASTING, INC.	)	File No. BPH-871203MH
CRIMIEL COMMUNICATIONS ASSOCIATES LIMITED PARTNERSHIP	)	File No. BPH-871203MN
N. WALTER GOINS	)	File No. BPH-871203NE
JH BROADCAST LIMITED PARTNERSHIP	)	File No. BPH-871203NF
ANNE M. COUNIHAN	)	File No. BPH-871203NQ
COVE COMMUNICATIONS, INC.	)	File No. BPH-871203NT
For Construction Permit for a New FM Station on Channel 289A in Eden Prairie, Minnesota)	

MEMORANDUM OPINION AND ORDER

Issued: December 6, 1989;

Released: December 7, 1989

Background

1. This is a ruling on Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio ("MPR"). In its Motion, MPR seeks a form of air hazard issue against five competing applicants: Southwest Suburban Broadcasting, Inc. ("SSBI"), N. Walter Goins ("Goins"), JH Broadcast Limited Partnership ("JH"), Anne M. Counihan ("Counihan") and Cove Communications, Inc. ("Cove"). Oppositions were filed on November 1, 1989, by SSBI, Goins, Counihan and Cove. There is no record of an Opposition being filed by JH. MPR filed its Consolidated Reply on November 20, 1989. ¹

¹ Allied pleadings were filed as follows: Goins filed a Supplement on November 14, 1989; Cove filed a Supplement on November 6, 1989; and MPR filed an Errata on November 21, 1989.

Facts

2. An air hazard issue was specified in the Hearing Designation Order (DA 89-1024) against 8 applicants who had not received FAA determinations that their technical proposals would pose no hazard to air navigation. See 4 F.C.C. Rcd 6756, released September 7, 1989, at Paras. 11, 20(5). Only four of those applicants are now prosecuting their applications. However, in a subsequent development, two other applicants, Goins and Cove, received notices from FAA that their clearances were being rescinded. MPR alleges that all applicants in this case face the same Electromagnetic Interference (EMI), all are predicted to have their FAA clearances rescinded and, therefore, each should have an air hazard issue added against the respective proposals. Therefore, in addition to Goins and Cove, air hazard issues are also sought to be added against SSBI, JH and Counihan.

3. The circumstances concerning FAA's re-evaluations stem from computerized calculations for measuring interference with transmission of air navigation facilities. According to MPR's engineering expert, the five applicants succeeded in obtaining initial clearance at a time when FAA was using the so-called "Venn Diagram" analysis technique to measure the potential for interference. Apparently, it was during the pendency of the Eden Prairie applications that the FAA adopted a new procedure for evaluation which is more restrictive called the "Airspace Analysis Model." According to the MPR expert, if the proposals of the applicants who have not received air hazard determinations, or who have had their earlier positive clearances revoked under the new evaluation procedures, all will suffer the same predicted EMI problems which prevented MPR from getting its FAA clearance.

4. The FAA's objections are not based on the heights of any of the proposed facilities but are based instead on the use of Channel 289A in the Eden Prairie area. Therefore, the FAA objections would be the same for all applicants.

Discussion

5. The Oppositions have been reviewed in docket order. Also, since the same malady seems to apply uniformly to all applicants, a common solution is the most efficient way to resolve the matter rather than add litigation issues.

6. SSBI suggests in its Opposition that rather than litigate a common air hazard issue, the winning applicant should receive a construction permit that is conditioned on resolving the EMI issue with the FAA. Goins, Counihan and Cove have petitioned the FAA for review of their clearance denials which are still pending final resolution.

7. Cove also cites a letter from former Chairman Fowler to the FAA's Administrator dated July 12, 1985. The letter acknowledges that there are ongoing discussions between FCC staff and FAA staff on procedures to ensure against electromagnetic interference to air navigation communication and, as a "first step":

[T]he Commission will add limiting conditions to the authorization (Construction Permit) granted to

broadcast station applicants, to cover those conditions where the FAA considers the nature of the potential electromagnetic interference sufficient to warrant such action, to preclude creating danger to aviation safety.

See Cove Opposition at Exh. 4.

8. Understandably, MPR wishes to see all parties faced with a common issue or be relieved of the need to face the issue. Thus, as ruled at the Prehearing Conference, to the extent that MPR faces an air hazard issue based on a failure to meet FAA EMI requirements, that issue will be treated as moot. Prehearing Conference, November 21, 1989 at Tr. 21-24.

9. In its Reply pleading, MPR notes that SSBI, Goins, Cove and Counihan now have no FAA clearance and JH has defaulted on the motion. There MPR also argues in the alternative that if issues are not added against the other five applicants who, like MPR, have the same problem with EMI, then the issue against MPR should be deleted.

10. Based on the letter communication from the Chairman to FAA in 1985, and with the concurrence of all parties, including the Bureau, there will be no issues added against these five applicants. Also, in the interests of equity and efficiency, the air hazard issue against MPR will not be further prosecuted under any theory involving a failure to meet the FAA's current EMI standards. Nor will any other party face a disqualifying air hazard issue in this case that is based on a failure to meet the FAA's current EMI standards.

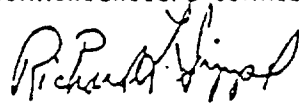
Ruling

Accordingly, IT IS ORDERED that the Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio seeking the addition of air hazard issues against Southwest Suburban Broadcasting, Inc., N. Walter Goins, JH Broadcast Limited Partnership, Anne M. Counihan, and Cove Communications, Inc. IS DENIED.

IT IS FURTHER ORDERED that the air hazard issue cited by the Commission against Minnesota Public Radio, insofar as it is based on a failure to meet FAA EMI standards, WILL NOT BE PROSECUTED in this case.

IT IS FURTHER ORDERED that any grant of a construction permit in this proceeding to any applicant who has not satisfied the FAA's EMI standards SHALL BE CONDITIONED in accordance with terms to be submitted by the Mass Media Bureau before a final order is issued by the Presiding Judge.

FEDERAL COMMUNICATIONS COMMISSION


Richard L. Sippel
Administrative Law Judge

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-1255
3766

In re Application of	)	MM DOCKET NO. 90-630
)	
TOPP BROADCASTING LIMITED PARTNERSHIP	)	File No. BPH-880615MB
)	
)	
For Construction Permit for a)	
New FM Station on Channel 287C2)	
in Stewartville, Minnesota)	

MEMORANDUM OPINION AND ORDER

Issued: April 9, 1991 : Released: April 11, 1991

1. Under consideration are a Motion for Summary Decision filed on March 21, 1991, by Topp Broadcasting Limited Partnership ("Topp"), and comments in support of the motion filed by the Mass Media Bureau on April 4, 1991.

2. Topp seeks summary decision of the air hazard issue specified against it in the Hearing Designation Order in this proceeding, DA 90-1928, released January 28, 1991 ("HDO"). The issue was predicated upon a determination by the Federal Aviation Administration ("FAA") that Topp's proposal would create a potential for electromagnetic interference ("EMI") to air navigation equipment. To meet this issue, Topp states it is willing to accept a specified condition on its construction permit which would require it, inter alia, to take corrective action should its proposal cause EMI. The Mass Media Bureau supports Topp's motion, stating that the specified condition will moot the air hazard issue.

3. Topp's motion will be granted. Given the imposition of the condition, it is clear that the air hazard issue will become moot, that no genuine issue will remain for determination at the hearing, and that Topp is otherwise entitled to summary decision. See Section 1.251(d) of the Commission's Rules; see also Texas Communications Limited Partnership, 5 FCC Red 5876, 5879 (Rev. Bd. 1990). Further, it is noted that the FAA is a party to this proceeding, that the FAA was served with a copy of Topp's motion, and that the FAA failed to file any opposition or objection to the imposition of a condition in general, or to the imposition of the specific condition sought by Topp. Consequently, the FAA must be deemed to have acquiesced in the resolution of the air hazard issue through the imposition of the condition.

4. With the resolution of the air hazard issue, there remains no impediment to a grant of Topp's application, and it will be granted.

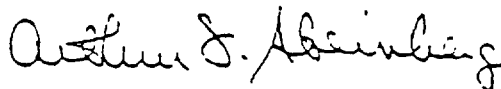
Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Topp on March 21, 1991, IS GRANTED, and Issue 2 IS RESOLVED in its favor.

IT IS FURTHER ORDERED that the application of Topp Broadcasting Limited Partnership (File No. BPH-880615MB) for a construction permit for a new FM station at Stewartville, Minnesota, IS GRANTED subject to the following conditions:¹

- (a) Program test authority may not commence on Channel 287C2 until FM Station KWNG (Red Wing, Minnesota) commences program tests on Channel 290C2.
- (b) Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

1 With regard to condition (a), see paragraphs 11 and 19 of the HDO.

Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, D.C. 20554

FCC 91M- 1317
3850

In re Applications of	)	MM DOCKET NO. 91-10
)	
CHARLEY CECIL & DIANNA MAE WHITE	)	File No. BPH-891213M
d/b/a WHITE BROADCASTING PARTNERSHIP)	
)	
PEACHES BROADCASTING, LTD.	)	File No. BPH-891214MN
)	
SAGE BROADCASTING CORPORATION OF	)	File No. BPH-891214MR
JUPITER, FLORIDA)	
)	
DOUGLAS JOHNSON	)	File No. BPH-891214M2
)	
NORTHEAST FLORIDA BROADCASTING CORP.	)	File No. BPH-891214NA
)	
JEM PRODUCTIONS, LIMITED PARTNERSHIP	)	File No. BPH-891214ND
C/O JOYCE MORGAN)	
)	
For Construction Permit for a)	
New FM Station on Channel 289A)	
in Baldwin, Florida)	

MEMORANDUM OPINION AND ORDER

Issued: April 12, 1991 ; Released: April 16, 1991

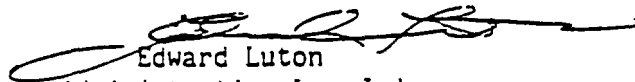
1. Under consideration are 1) Motion for Summary Decision, filed March 21, 1991 by Charley Cecil & Dianna Mae White, d/b/a White Broadcasting Partnership; 2) Mass Media Bureau's Comments in Support of Motion for Summary Decision, filed April 4, 1991. White seeks summary decision on an air hazard issue specified against it. White shows that the Federal Aviation Administration has determined that White's proposed antenna would not pose a structural hazard, but that his proposal has the potential of causing electromagnetic interference ("EMI"). White agrees to the imposition of the following condition upon its construction permit:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

There is no indication that the Federal Aviation Administration objects to the imposition of the condition. The motion for summary decision will be granted.

Accordingly, IT IS ORDERED that the Motion IS GRANTED and the air hazard issue specified against White is resolved, CONDITIONED as set forth above, in his favor.

FEDERAL COMMUNICATIONS COMMISSION


Edward Luton
Administrative Law Judge

CLEMSON BROADCASTING, INC.
BPH-901219MD

AMENDMENT TO APPLICATION
CLEMSON, SC

ATTACHMENT 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	MM DOCKET NO. 90-630
)	
TOPP BROADCASTING LIMITED	)	File Nos. BPH-880615MB
PARTNERSHIP <u>et al.</u>	)	<u>et al.</u>
)	
For Construction Permit)	
Channel 287C2)	
Stewartville, Minnesota)	

To: Administrative Law Judge
Arthur I. Steinberg

MASS MEDIA BUREAU'S COMMENTS ON
MOTION FOR SUMMARY DECISION

1. On March 21, 1991, Topp Broadcasting Limited Partnership ("Topp") filed a motion for summary decision. Topp seeks favorable resolution of the air hazard issue specified against it in the Hearing Designation Order, 6 FCC Rcd 483 (1991) ("HDO"). The Mass Media Bureau submits the following comments in support of Topp's motion.

2. Topp's motion shows that the Federal Aviation Administration ("FAA") has determined that Topp's proposal constitutes a hazard to air navigation solely because it may cause electromagnetic interference (EMI) to air navigation facilities. In such situations, acceptance of the condition specified by Topp moots the air hazard issue, making summary decision in its favor appropriate. See, e.g., Texas Communications Limited Partnership, 5876, 5879 (Rev. Bd. 1990) and Section 1.251 of the Commission's Rules. Topp further demonstrates that, in the event of a grant of the pending joint